S.B. Civil Review Petition No. 10/2006
IN
S.B. Civil Misc. Appeal No. 2779/2003

M/s Alwar Prakash & Others Vs. Devendra Kumar Gupta

Date of Order: ***11.9.2006***

HON'BLE MR. K.C.SHARMA, J.

Dr. Prakash Chandra Jain for Defendant petitioners

Heard learned counsel for the defendant petitioners.

This court vide its common judgment dated 18th October, 2005 decided as many as 30 Misc. Appeals of the defendants, arising out of the orders passed by the trial court, thereby allowing the applications under Order 39 Rule 1 and 2 CPC filed by the plaintiff along with suits for recovery of loan amount.

Through this review petition in appeal No. 2779/2003, the defendant petitioner has prayed for review and/or to set aside the judgment date 18.10.2005 passed by this court. Review of the judgment is sought, inter-alia, on the ground that every case has to be decided on its own merits and that import of facts from another case is not permissible in the eye of law. According to the learned counsel, the ingredients of

the provisions of Order 39 Rule 1 and 2 CPC and Order 38 Rule 5 CPC are quite distinct, but they have been clubbed together while deciding the appeal; the law cited at the time of argument has been over looked and the facts, statements, averments and the evidence on record have over looked and that being so, there is an error apparent on the face of record.

Any person feeling aggrieved may apply for a review of judgment if there is a mistake or error apparent on the face of the record or for any other sufficient reason. In the case at hand, the review petitioner has not been able to point out any mistake or error apparent on the face of record in the judgment sought to be reviewed so as to warrant review of the judgment. In my considered view neither there is any sufficient reason for review of the judgment nor the petitioner has been able to point out any error or mistake which could be said to be apparent on the face of record.

Be that as it may, this court after considering every aspect of the matter, including the fact that in a suit for recovery of money injunction order can be passed if the court is satisfied that the defendant

threatens or intends to remove or dispose of his property with a view to defraud his creditor. While dismissing the appeal of the defendant petitioners this court also observed that the trial court granted injunction in favour of the plaintiff after having found all the three ingredients in their favour. While deciding the appeal, keeping in view the fact that it was a suit for recovery of money, this court directed the trial court to decide the suit as expeditiously as possible. However, it is given out that suit/s is/are still pending decision. Therefore, directions need to be issued to decide all similar suits within a specified period.

Resultantly, the review petition having no substance is liable to be dismissed and it is dismissed accordingly. The trial court is directed to decide all the suits, which have given rise to filing of Civil Misc. Appeals as detailed out in the judgments dated 18.10.2005 of this court, dismissing all these appeals, within a period of four months from the date of presentation of a copy of this order.

(Khem Chand Sharma),

thanvi/

S.B. Civil Review Petition No. 9/2006
IN
S.B. Civil Misc. Appeal No. 2477/2003

M/s Alwar Prakash & Others Vs. K.K. Srimal and another

Date of Order: ***11.9.2006***

HON'BLE MR. K.C.SHARMA, J.

Dr. Prakash Chandra Jain for Defendant petitioners

Heard learned counsel for the defendant petitioners.

This court vide its common judgment dated 18th October, 2005 decided as many as 30 Misc. Appeals of the defendants, arising out of the orders passed by the trial court, thereby allowing the applications under Order 39 Rule 1 and 2 CPC filed by the plaintiff along with suits for recovery of loan amount.

Through this review petition in appeal No. 2477/2003, the defendant petitioner has prayed for review and/or to set aside the judgment date 18.10.2005

passed by this court. Review of the judgment is sought, inter-alia, on the ground that every case has to be decided on its own merits and that import of facts from another case is not permissible in the eye of law. According to the learned counsel, the ingredients of the provisions of Order 39 Rule 1 and 2 CPC and Order 38 Rule 5 CPC are quite distinct, but they have been clubbed together while deciding the appeal; the law cited at the time of argument has been over looked and the facts, statements, averments and the evidence on record have over looked and that being so, there is an error apparent on the face of record.

Any person feeling aggrieved may apply for a review of judgment if there is a mistake or error apparent on the face of the record or for any other sufficient reason. In the case at hand, the review petitioner has not been able to point out any mistake or error apparent on the face of record in the judgment sought to be reviewed so as to warrant review of the judgment. In my considered view neither there is any sufficient reason for review of the judgment nor the petitioner has been able to point out any error or mistake which could be said to be apparent on the face

of record.

Be that as it may, this court after considering every aspect of the matter, including the fact that in a suit for recovery of money injunction order can be passed if the court is satisfied that the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditor. While dismissing the appeal of the defendant petitioners this court also observed that the trial court granted injunction in favour of the plaintiff after having found all the three ingredients in their favour. While deciding the appeal, keeping in view the fact that it was a suit for recovery of money, this court directed the trial court to decide the suit as expeditiously as possible. However, it is given out that suit/s is/are still pending decision. Therefore, directions need to be issued to decide all similar suits within a specified period.

Resultantly, the review petition having no substance is liable to be dismissed and it is dismissed accordingly. The trial court is directed to decide all the suits, which have given rise to filing of Civil Misc. Appeals as detailed out in the judgments dated

18.10.2005 of this court, dismissing all these appeals, within a period of four months from the date of presentation of a copy of this order.

(Khem Chand Sharma),

thanvi/